

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. 2006-327-WS – ORDER NO. 2009-\_\_\_\_

FEBRUARY \_\_, 2009

In Re:

Petition of the Office of Regulatory Staff	)	
Regarding Wyboo Plantation Utilities, Inc.'s	)	ORDER APPROVING
Collection and Charging of Unauthorized and	)	SETTLEMENT AGREEMENT
Unapproved Rates	)	

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Petition of the Office of Regulatory Staff (“ORS”) regarding the collection and charging of unauthorized and unapproved rates by Wyboo Plantation Utilities, Inc., (hereinafter referred to as “Wyboo” or the “Company”). The Petition was filed on October 20, 2006, pursuant to 26 S.C. Code Ann. Regs. 103-502.11, 103-503, 103-702.14, and 103-703<sup>1</sup> and S.C. Code Ann. § 58-5-210 (1976). ORS amended its Petition on December 28, 2006, seeking: (1) the opportunity to present evidence to support the claim that certain unapproved fees were assessed by Wyboo; (2) a requirement that customers of Wyboo be notified of the pending action; (3) that Wyboo submit an Answer to the Petition; (4) that the customer bills be adjusted pursuant to Commission Regulations 103-533 and 103-733; and (5) for any other action or relief deemed necessary by the Commission.

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<sup>1</sup> Subsequent to the filing of the Petition and Amended Petition, the Commission revised its water and sewer regulations. As revised, the applicable regulations are 103-502.8, 103.502.10, 103-503, 103-702.12, 103-702.13 and 103-703.

Wyboo is a public utility, as defined by S.C. Code Ann. §58-5-10(4) (Supp. 2007), providing water and sewer service to the public for compensation in Clarendon and Sumter counties, South Carolina, as approved by the Commission in Docket Nos. 96-227-W, 97-391-S, and 2002-356-W. Wyboo filed a Response to ORS's Petition on February 16, 2007 and filed a Motion for Approval of Water Tap Fee to Conform to Existing Rate, Nunc Pro Tunc on November 7, 2008. Notice of the action brought by ORS was provided by First Class mail on August 29, 2008. The ORS brought this action pursuant to its charge to represent the public interest of South Carolina in matters before the South Carolina Public Service Commission pursuant to S.C. Code Ann. §58-4-10 et seq. (Supp. 2007).

While no petitions to intervene were filed, Mr. Richard P. Bricken and Mrs. Karen C. Bricken by letter dated August 5, 2008, requested that they be considered parties of record and allowed to submit testimony. Mr. and Mrs. Bricken withdrew their request on August 20, 2008, having settled their complaint with the Company.

The Company filed an Application for Approval of the Sale of a Portion of the Assets of Wyboo Plantation Utilities, Incorporated to Clarendon County on December 10, 2008 (see Docket No. 2008-445-WS). The Company submitted a Motion on December 16, 2008, requesting that the Commission shorten the notice period to twenty days. ORS responded by letter dated December 17, 2008, stating that ORS does not oppose the Company's request and that the Commission should require the Company to post in escrow \$44,555.36. The Company replied that the amount in controversy was less than \$44,555.36. This Commission ordered that the assets of the Company's performance bond must remain subject to Docket No. 2006-327-WS and ordered the Company to establish an escrow account in the amount of \$25,000 in

Docket No. 2008-445-WS until the time of hearing or other resolution of Docket No. 2006-327-WS. Additionally, we required a written commitment to personal jurisdiction from Mr. Mark Wrigley for Docket No. 2006-327-WS. (See Order No. 2008-852) A verified written commitment to personal jurisdiction was filed with the Commission on January 27, 2009.

On February 6, 2009, ORS and Wyboo (together the “Parties”) filed a Settlement Agreement pursuant to this Commission’s Settlement Policies and Procedures, as revised June 13, 2006. A hearing on this matter was conducted on February 11, 2009. We hold that the Settlement Agreement in this case is a complete, fair and reasonable resolution of this proceeding. At the Commission’s weekly agenda meeting held February 11, 2009, the Commission voted to approve the Company’s request to sell a portion of the Company’s assets to Clarendon County and to release the funds held in escrow conditioned upon resolution of Docket No. 2006-327-WS.

## **II. JURISDICTION**

S.C. Code Ann. §58-5-210 (1976) vests the Commission with the “power and jurisdiction to supervise and regulate the rates and service of every public utility in this State...” In carrying out these duties in relation to the instant matter and subsequent Settlement Agreement, the Commission’s published “Settlement Policies and Procedures” (Revised June 13, 2006) are applicable to guide this proceeding. Specifically, Section II of the Settlement Policies and Procedures, titled “Consideration of Settlements,” states:

When a settlement is presented to the Commission, the Commission will prescribe procedures appropriate to the nature of the settlement for the Commission’s consideration of the settlement...the Commission will convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is just,

fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.

### III. EVIDENCE

At the hearing in this matter, ORS was represented by Nanette S. Edwards, Esquire and Wyboo was represented by Richard L. Whitt, Esquire. ORS presented an overview of the provisions of the Settlement Agreement and its Exhibits. The remaining balance of charges that ORS contends were unauthorized is \$23,000.14. Pursuant to the terms of the Settlement Agreement, Wyboo will refund 50% of the remaining balance or \$11,500.07 to those accounts identified in Column A of Exhibit One to the Settlement Agreement. The Settlement Agreement requires counsel for Wyboo to establish a trust account and to issue the refunds which are identified in Column F of Exhibit One by U.S. First Class mail. To the extent the funds cannot be returned, those amounts shall escheat to the State. Counsel for Wyboo shall maintain sufficient documentation to substantiate that the funds have been returned or escheated to the State. Upon completion, ORS shall provide to the Commission a report independently verifying that the funds have been returned or escheated to the State. Mr. Wrigley's letter dated January 27, 2009 is included as Exhibit Two to the Settlement Agreement and is a commitment to personal jurisdiction under this Commission.

Counsel for Wyboo affirmed that his client was in agreement with the provisions of the Settlement Agreement and on behalf of his client expressed sincere regret for the unauthorized charges, which his client believed at the time of billing were allowed. Counsel for Wyboo also confirmed that a portion of the system was not transferred to Clarendon County thereby leaving approximately sixty (60) customers who will continue to be served by Wyboo.

Counsel for the Parties explained that settling at 50% of the remaining charges represented a balance between penalizing the Company for assessing charges not approved by the Commission and yet compensating the Company for the value of the service provided to the customer.

#### **IV. FINDINGS OF FACT**

Based upon the Explanatory Brief and Joint Motion, the Settlement Agreement including Exhibits One and Two which were admitted as Composite Hearing Exhibit 1, and the submissions provided by counsel for the Parties, the Commission makes the following findings of fact:

1. By statute, the Commission is vested with jurisdiction to supervise and regulate the rates and service of every public utility in this State. S.C. Code Ann. §58-5-210 (1976).

2. After careful review and consideration by this Commission of the Settlement Agreement and the evidence in the record of this case, the Commission concludes as a matter of law that the Settlement Agreement results in a just and reasonable resolution of the Petition filed by ORS.

3. The Commission finds that the return of \$11,500.07 to the accounts listed in Exhibit One is just and reasonable and resolves this matter without further costly litigation. We hereby adopt and attach to this Order as Order Exhibit 1, the Settlement Agreement including Exhibits One and Two, which were entered into the record of this case without objection as Composite Hearing Exhibit One.

IT IS THEREFORE ORDERED:

1. The Settlement Agreement including attached Exhibits One and Two are attached hereto as Order Exhibit 1 and are incorporated into and made a part of this Order by reference.
2. The Settlement Agreement between the Parties is approved and adopted by this Commission as producing a just and reasonable resolution and is in the public interest.
3. Consistent with our decision in Docket No. 2008-445-WS, we order the release of the \$25,000 held in escrow and further order that the amount of \$11,500.07 be refunded in accordance with the provisions of the Settlement Agreement adopted by this Commission.
4. The assets of the Company's performance bond are released subject to the filing of a replacement bond for the remaining portion of the Company that was not transferred to Clarendon County. The performance bond is due within thirty days of the issuance of this Order.
5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:

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Elizabeth B. Fleming, Chairman

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John E. Howard, Vice-Chairman  
(SEAL)